

F.No. 380/05/DBK/2018-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 1/12/21

Order No. 25/21-Cus dated 01-07-2021 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/Cus(CCP)/AA/2024/2017 dated 28.11.2017, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Commissioner of Customs (Preventive), Kolkata

Respondent : M/s Krishna Tissues Pvt. Ltd.

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**ORDER**

A Revision Application No.380/05/DBK/18-RA dated 19.04.2018 has been filed by Commissioner of Customs (Preventive) Kolkata, (hereinafter referred to as the applicant) against the OrderNo.KOL/Cus(CCP)/AA/2024/2017 dated 28.11.2017, passed by the Commissioner of Customs (Appeals), Kolkata. Commissioner (Appeals), vide the abovementioned Order-in-Appeal, has allowed the appeal of M/s Krishna Tissues Pvt. Ltd., (herein after referred to as the respondent) by setting aside Order-in-Original No. 03/DC(DBK)/2015-16 dated 31.12.2015 on the ground that the item exported i.e. paper board: coated duplex board is rightly classifiable under drawback sl. No. 481001 and thus drawback is admissible at the rate already sanctioned to them. Application for condonation of delay has also been filed.

2. Brief facts of the case are that the respondent filed drawback claims in respect of 130 Shipping Bills with the Dy. Commissioner of Customs, Drawback Cell (CCP), Kolkata. The said claims were sanctioned by the jurisdictional Dy. Commissioner of DrawbackCC(P), Kolkata. However, on post disbursal scrutiny of the drawback claims, it was observed by the applicant that the respondent had wrongly classified the goods paper board: coated duplex board under drawback schedule sl. No. 481001 which is meant for item cast coated paper/paper board wherein the Drawback rate was (3%/2.4%), instead of under sl. no. 481099 as others, wherein the drawback rate was (1%/2%). Accordingly, a show cause notice dated 28.01.2015 was issued to the respondent for the recovery of excess drawback

availed amount of Rs.1,09,470/- along with interest,in terms of Rule 16A of the Customs, Central Excise duties and Service Tax Drawback Rules, 1995. Vide the above said Order-in-Original dated 31.12.2015, the demand was confirmed by the Dy. Commissioner of Customs, Drawback Cell, CCP, Kolkata. Aggrieved, the respondent filed an appeal before the Commissioner (Appeals) who passed the Order as above.

3. The instant revision application has been filed, mainly, on the ground that the exported goods are rightly classifiable under drawback sl. No. 481099 with drawback rate of (1%/2%) and not under 481001. Cross objections dated 07.06.2018 have been filed by the respondent.

4. Personal hearing in virtual mode was held on 12.01.2021, which was attended by Sh. Sudhir Mehta, Advocate, on behalf of the respondent. He reiterated the submissions made in the written reply dated 07.06.2018 and 06.01.2021. Upon being asked, Shri Mehta requested for one weeks time to confirm that the shipping Bills in the present revision application were the subject matter of Note Sheet Order dated 11.09.2012 relied upon by the respondent. He also undertook to submit copies of RTI correspondence vide which the copyof note sheet order dated 11.09.2012 was obtained. Respondent submitted their written submissions on 15.01.2021 wherein it is stated that the 29 Shipping Bills covered under the show cause notice dated 28.01.2015 and the adjudication order dated 15.10.2012 are part

of the adjudication order contained in the office note. Copy of RTI application vide which said office note was obtained has also been submitted.

5. The instant RA has been filed with a delay of 47 days. Administrative exigency has been pleaded for condonation. Delay is condoned.

6. The respondent has, as a preliminary objection, contended that the office note, containing internal office notes dated 04.09.2012 upto 16.10.2012, is an adjudication order. Hence, unless it is appealed against before the appellate authority, no demand can be raised and the principle of res-judicata would apply. Government has noticed that the said office note is nothing but audit observations in reference to the claim filed before the jurisdictional authority. The audit observation by no means can be construed as an adjudication because it lacks the basic ingredients which are required to be followed before an adjudication order is passed by any authority. CESTAT, Bangalore, in the case of M/s Titan company Ltd. Vs Commissioner of customs, Kochi 2014(307)E.L.T.884 (Tri. – Bang.) has held that to make a 'decision' or an 'order' judicial, the following criteria must be established:

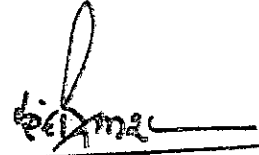
- (a) determination upon investigation of the question by an application of objective standard to facts found in the light of the existing rules,
- (b) the investigation is subject to certain procedural attributes contemplating of an opportunity of presenting its case, and
- (c) ascertainment of facts by means of evidence if dispute be on question of facts and if the dispute be on question of law on the presentation of legal arguments.

In the instant case, as regards to office note, no Show Cause Notice was issued and no personal hearing was granted to the respondent. It is also a fact on record that the authority concerned has not issued any speaking order conveying its decision or order to the respondent. In view of this, Government holds that the subject office note cannot be construed as a decision or order passed by the adjudicating authority. Thus, there is no merit in the present contention of the respondent.

7. On examination of the matter on merits, it is noted that that the only dispute in the instant case is that whether the goods namely "paper board: coated duplex board" are "cast coated paper board" or not for deciding the classification of the goods in question under Drawback Schedule. It is observed that the Show Cause Notice dated 28.01.2015 alleges that the goods 'paper board: coated duplex board' are classifiable under drawback schedule sl. No. 481099 and not under 481001 as was earlier claimed by the respondent. Government further observes that the orders passed by the lower authorities do not appropriately justify their respective conclusions, i.e., the item "paper board: coated duplex board" is "cast coated paper board" (as held by the Commissioner (Appeals), or it is not "cast coated paper board" (as held by the Dy. Commissioner of Customs, Drawback Cell). The orders passed by both the authorities do not disclose proper reasoning for the conclusions arrived at by them. In the facts and circumstances of the case and in the interest of justice, Government considers it appropriate that original authority should, de-novo, examine all issues on merits and pass a reasoned order giving full justification

regarding decision with regard to the classification of goods under the Drawback Schedule.

8. In view of the above, the revision application is allowed by way of remand to the original authority.



(Sandeep Prakash)

Additional Secretary to the Government of India

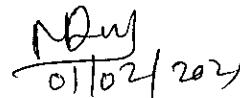
The Commissioner of Customs (Preventive),  
15/1 Strand Road, Custom House,  
Kolkata - 700001.

Order No. 25 /21-Cus dated 01-02-2021

Copy to:

1. M/s Krishana tissues Pvt. Ltd, 167, Old China Bazar Street, Kolkata – 700001
2. Commissioner of Customs (Appeals), Kolkata, 15/1 Strand Road, Custom House, Kolkata- 700001.
3. Deputy Commissioner, (Drawback, Preventive), 15/1 Strand Road, Custom House, Kolkata - 700001.
4. PS to AS(RA)
5. Guard File.
6.  Spare Copy

Attested



(Nirmala Devi)

Section Officer (REVISION APPLICATION)